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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 08/901,713 | 07/28/97 | BELL | A 400-005 <i>WC</i> |

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QM12/0504

EXAMINER

FOSTER, J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3728

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DATE MAILED:

05/04/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/901,713

Applicant(s)

Bell

Examiner

J. Foster

Group Art Unit

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☒ Responsive to communication(s) filed on Feb 25, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-31 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-31 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-31 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Lindsay (4,993,551) in view of Baumgartner (3,678,977). In the reference of Lindsay, the tool holder 10 may be considered to define a utility apron. The apron/holder includes a shell 20,22,24 with a lip portion 20 for contacting the lip of a bucket 12 to support the shell on the bucket. The exterior surface of the apron is at 24 and includes a plurality of pockets 28 disposed thereon. In addition, the interior surface of the apron is at 22 and includes a plurality of pockets 26 disposed thereon.

Although the reference of Lindsay does not disclose specific sizes for the pockets 26 and 28 of the holder 10, it would have been obvious to have made the pockets with any sizes desired, including the sizes claimed by Applicant, since it has been held that the particular size of an article generally will

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not support patentability. In re Rose, 105 USPQ 237, 240 (CCPA 1955); In re Yount, 80 USPQ 141.

Although the reference of Lindsay does not disclose a resilient pocket opening, the reference of Baumgartner suggests at element 27 and column 2, lines 13-19 that the opening edge of a pocket may be provided with an elastic band for the purpose of retaining objects placed into the pocket. Baumgartner further suggests in lines 22-24 that retained objects may include elongated hand implements (e.g., a pen or pencil) and cleaning items (e.g., cleansing tissues). Accordingly, it would further have been obvious in view of Baumgartner to have provided elastic bands at the openings of the pockets 26, 28 of Lindsay for the purpose of resiliently retaining hand and cleaning implements in the pockets.

Although the reference of Lindsay does not disclose pleats, the reference of Baumgartner also suggests at 28 and at column 2, lines 20-22 that pleats may be provided in the sides of a resilient pocket (23, 25) for the purpose of allowing expansion of the pocket to receive items in the pocket. This appears to correspond to Applicant's function for pleats. Therefore, it would further have been obvious in view of Baumgartner to have provided pleats in said pockets of Lindsay for the purpose of expanding the openings so as to receive items in the pockets.

3. Claims 1-31 are also finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-31 above, and further in view of Yoo

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(5,431,265). The reference of Yoo not only teaches using elastic in a pocket opening for retaining an item in the pocket but using such an elastic for retaining the item in the pocket opening (col. 4, line 68 through col. 5, line 3). This appears to correspond to Applicant's function for resilient pocket openings. Accordingly, it further would have been obvious in view of the suggestion of Yoo to have provided elastic along the opening edge of the pockets of Lindsay for the purpose of retaining items in the pocket openings.

4. Applicant's arguments filed Feb 25, 2000 have been fully considered but they are not persuasive. To the extent that Applicant asserts that Baumgartner and Yoo are non-analogous as being not to utility aprons for buckets, an inventor is presumed to not only to have full knowledge of the prior art in the field of endeavor but to also have the ability to select and utilize knowledge from other arts reasonably pertinent to the inventor's particular problem. In re Antle, 170 USPQ 285, 287-288 (CCPA 1971). Each of the references of Baumgartner and Yoo expressly teach that an elastic pocket opening will retain an item in the pocket. Moreover, the reference of Yoo further teaches that an elastic pocket opening will retain an item in the pocket opening. Accordingly, the teachings of Baumgartner and Yoo are reasonably pertinent to Applicant's particular problem: retaining items in pockets. Therefore, the references of Baumgartner and Yoo are analogous art.

Regarding the argument that there is no motivation to make the modifications of Lindsay proposed in the Office action. The

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examiner responds that the motivation in Baumgartner and in Yoo for modifying Lindsay is pointed out sufficiently in the rejections.

It is noted that Applicant's arguments made with respect to Berry et al are moot.

The argument that there is no suggestion in Yoo to apply the teachings thereof to aprons is not persuasive since Yoo's teachings with respect to article holding pockets provide suggestion enough to modify the pockets of Lindsay for providing the function suggested by Yoo even though Yoo is not concerned with aprons.

Applicant's argument regarding particular pocket sizes in which Applicant calls for the invention to be viewed as a whole is unpersuasive since the examination of record has viewed Applicant's invention as a whole. The examiner stands by his position taken in the previous Office action (see pages 4-6) with respect to pockets having a particular size.

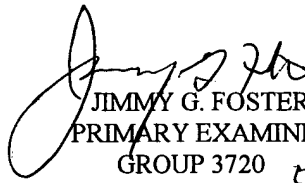
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated .

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from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. To insure prompt handling of correspondence after final rejection, it should be addressed **BOX AF**.


JIMMY G. FOSTER
PRIMARY EXAMINER
GROUP 3720 5/3/00

JGF
May 3, 2000